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# DRAFT MODEL LAW ON LEGAL ASPECTS OF ELECTRONIC DATA INTERCHANGE (EDI) AND RELATED MEANS OF COMMUNICATION

Compilation of comments by Governments and international organizations

Addendum

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A. States

**FRANCE**

**[Original: French]**

Article 1. Sphere of application

The notion of "international commercial law" should replace that of "commercial law" in the first paragraph of article 1, the possibility of extending the scope of the Model Law to data messages of a domestic nature being accordingly allowed for in the footnote. This amendment is more in keeping with the object of UNCITRAL, which, as its name indicates, deals with international trade law.

Article 2. Definitions

(b) The agreed definition of "electronic data interchange" (EDI), i.e. "electronic transfer from computer to computer ...", should be supplemented in the guide to enactment by an explanation as to whether or not the physical transmission of disks is covered.

(c) The term "originator" ("*initiateur*") should be replaced by "sender" ("*expéditeur*"), since "*initiateur*" has no meaning in French. Moreover, the definition of "*expéditeur*" meets the intention of some delegations, namely generation of the information without communication; thus, in terms of substance, there is no obstacle to the proposed change.

(e) The term "intermediary" should be defined and retained as appearing in the draft Model Law; the reference to this intermediary in the definitions of sender and addressee should also be maintained. The guide should specify the role and powers that can be assigned to the intermediary, since the Model Law is deficient on this point, which the French delegation considers to be very important (cases where the parties dispense with an intermediary are rare; indeed, only a few very large enterprises can operate direct from one point to another without using the services of third parties or telecommunications systems).

(f) The words "a system for" should be replaced by the phrase "an ensemble of technical means of", as was put forward as an option by the Working Group at its previous sessions. In our view, the phrasing "Information system means a system ..." is inappropriate both from a drafting viewpoint and in terms of substance, since the information system is in actual fact characterized by an ensemble of technical means.

Article 3. Interpretation

This article refers to the international source of the Model Law, which is justification for the suggested inversion in article 1, i.e. to establish the principle of the sphere of application as that of international commerce. The footnote will enable States that so wish to apply it to commercial law.

Article 5. Writing

It would be desirable to replace the existing text of paragraph (1) of article 5 by that of the second paragraph of article 6 of the proposed wording submitted by France (document A/CN.9/WG.IV/XXVII/CRP.2 of 1 March 1994), which reads:

> "Where a law or usage requires a written or original document, a (trade) data message exchanged by one of the means of communication covered by these Rules shall be considered to have legal validity provided that it faithfully reproduces what the parties exchanged and that it is recorded in an

intelligible and reproducible form".

The guide should also add that a writing is a support (paper-based or electronic), an item of information and a medium (ink in the case of paper), in order to explain more clearly the functional approach adopted in the Model Law.

Paragraph 63 of the guide should state that the message must be retained in the form in which it was received, in order to include a reference to the integrity of the message.

Article 6. Signature

According to the draft text, the function of the signature is to identify the sender and also to approve the content of the information, provided that the method used is reliable, having regard both to the message and to any agreement made between the parties. The guide should specify that the term "circumstances", which appears in paragraph (1) (b), applies also to commercial practice and trade usage.

Article 7. Original

The phrase "information ... first composed in its final form" can be regarded as being equivalent to the French term "*information d'origine*" or "*information originaire*" ("original information"). Nevertheless, the guide should introduce a parallel, with a view to the possible incorporation of this article into the French legal system.

In paragraph (2) (b), the term "*fidélité*" would be preferable to "*intégrité*" ("integrity").

Paragraph (2) (a) contains the word "*endossement*" ("endorsement"). It would be more appropriate to refer to "*marque*" ["mark"] or "*marquage*" ["marking"], since "*endossement*" has a very specific meaning in French law; no ambiguity is then possible, even if the guide explains that in this Model Law the term does not have the meaning attributed to it in French law.

Article 8. Admissibility and evidential value of data messages

Rectify the clerical error in the French version: the reference to article 8 should be changed to article 7.

Article 9. Retention of data messages

Paragraph (3) should make express reference to intermediaries providing services for purposes of retention of data messages. The text would benefit from being more specific on this point.

Article 11. Attribution of data messages

In paragraph (4), since a simple presumption is involved, the word "presumed" is preferable to "deemed". Indeed, where the message is that of an originator, its content is presumed to be (it may be disputed) that received by the addressee. Where there is an error or an erroneous duplication of the message, the content is not presumed to be that received in so far as the addressee knew of the error or if the addressee had exercised reasonable care or had used an agreed procedure. This article should not be amended.

Article 14. Time and place of dispatch and receipt of data messages

This article does not establish any conflict-of-laws rule.

## NIGERIA

**[Original: English]**

The Working Group may wish to consider in its formulation of the Legal Provisions on the transaction of electronic data exchange the fact that computers and telefax could acknowledge receipt of information. For example an electronic message could be sent by fax or computer exchange to our office, our fax or computer that receives the message could acknowledge the receipt of the message, without any person or officer at this office giving this acknowledgement, because these electronic gadgets have been so programmed. Now if a person sends an electronic message and receives an acknowledgement issued, automatically, by the electronic receiving machine, is he to assume that the electronic message has been received or accepted by the other person to whom actually the message is sent?

We looked at the definition of "originator" and are of the humble opinion that it will be far much easier if the definition is made to address a "person" and then this definition be extended to include an "originator" of an electronic message. Because of the development of computer banks, a person could select pre-programmed message and command the computer to transmit or send the message. This person is not the originator of the pre-programmed electronic message and yet is the sender of that particular electronic message.

Premised on the foregoing observations we made an attempt to re-draft some of the provisions. Our re-draft of Article 11 is something like this:

1. A person that is sending a data message may, before sending the data message or in the data message, request that the person receiving the data message should acknowledge receipt of the data message.

2. The person that is sending the data message may request that the acknowledgement of receipt of the data message should be in a particular form.

3. A person that receives a data message may:

   (a) acknowledge receipt of the data message in the particular form stated by the person sending the data message;

   (b) acknowledge receipt of the data message, where the person sending the data message has not stated a particular form of acknowledging receipt, by any communication or conduct sufficient to indicate to the person sending the data message that the data message has been received.

4. A person that receives a data message shall not, where the person sending the data message has requested acknowledgement of receipt of the data message, rely on the data message for any purpose, until an acknowledgement has been received by the person sending the data message.

5. A person that sends a data message and has not received any acknowledgement of receipt of the data message within the time the acknowledgement is to have been made or within a reasonable time, may give notice to the person to whom the data message was sent that he is treating the data message as though it had not been received.